

**Letters of Findings Number: 02-20200246P
Corporate Income-Penalty
For the Tax Year 2012-2014**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 requires the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Company provided sufficient documentation to waive the penalty assessed.

ISSUE

I. Tax Administration-Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten-percent penalty for remitting a dishonored payment.

STATEMENT OF FACTS

Taxpayer is a corporation doing business in Indiana. Taxpayer was assessed a ten-percent penalty after being audited by the Indiana Department of Revenue ("Department"). Taxpayer protests the imposition of the penalty but does not protest the audit adjustment or interest. Additional facts will be supplied as necessary.

I. Tax Administration-Penalty.

DISCUSSION

Taxpayer protests the imposition of a penalty. Taxpayer states that it had all intentions of filing a complete and accurate return. In addition, Taxpayer acknowledges that it is liable for the audit assessment and has paid the resulting tax and interest.

The Department is authorized to impose a ten-percent penalty for failure to timely file a required return and/or remit tax payment. IC § 6-8.1-10-2.1. Penalty waiver is required if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1(d). The Indiana Administrative Code, further provides in relevant part:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under IC § 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice,

etc.;

(5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer's history of compliance is sufficient to support an attempt to try to file correct returns each year. In addition, Taxpayer's explanation and paying of the base tax and interest is sufficient to establish reasonable cause for the dishonored payment, and thus the penalty is waived.

FINDING

Taxpayer's protest of penalty is sustained.

December 8, 2020

Posted: 02/24/2021 by Legislative Services Agency

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